



Cesar Z. Ruiz

Equal Justice Works Fellow Sponsored by the Lavan-Harris Family

LatinoJustice PRLDEF

Nassau Redistricting Commission Hearing

New York, New York

October 26, 2022

Greetings, Commissioners of the Nassau County Temporary Redistricting Advisory Commission. Thank you for providing me with this opportunity to testify.

My name is Cesar Z. Ruiz. I am an attorney at LatinoJustice PRLDEF and a member of its New York Redistricting Project staff. LatinoJustice PRLDEF is a Latinx civil rights organization that for the past 50 years has worked to create a more just society. LatinoJustice PRLDEF uses and challenges the rule of law to secure transformative, equitable and accessible justice; empowers our community; and fosters leadership through advocacy and education. We have *actively* participated in various New York redistricting and mapping processes over the past several decades, advocating for equitable representation of the Latinx community. We continue in that effort once more.

Redistricting is a critical component of our democracy, one that will determine the political representation of Nassau County residents for the next 10 years. As we know, historically, members of marginalized communities have been excluded and disenfranchised by a



political process that is often partisan. Our participation and that of our communities in this process is crucial.

I. Need for Transparency and Public-Facing Process

Redistricting works only if it accounts for the interests of the community it purports to represent. While the Temporary Redistricting Advisory Commission has initially endeavored to make the current mapping process transparent and inclusive by conducting public hearings before releasing its first draft of the county legislature map, the Commission must ensure continued equitable access by providing an equal opportunity for public comment after the Commission reaches consensus on its initial maps. No map should be approved without first affording public review and the opportunity to comment. Whatever maps comes out of your deliberations *must* be subject to public scrutiny before being sent to the Nassau County Legislature for final approval.

II. It is Imperative that Nassau County Legislative Maps Accurately Reflect the Demographic Growth of Latino Community Members, as Required Under the Voting Rights Act of 1965.

A. Latino Demographic Growth

Over the past 10 years, Nassau County has seen a significant increase in Latino population. In 2010, Latinos represented 14.6% of the total population, but by 2020 that number had increased significantly to 18.4%; nearly one in five Nassau County residents is Latino. In raw numbers, the County saw a 31.3% increase in Latino population -- 61,070 people -- is a significant shift in the electorate. The legislative map must now account for this shift.



B. Protected Classes Under § 2 of the Voting Rights Act

Black, Latino and Asian community members are protected classes under § 2 of Voting Rights Act, which prevents the dilution of their vote by any legislative map. Given the large increase of Latino population in Nassau County, there is no justification for the reduction of Latinos' ability to elect candidates of their choice. As it stands now, the Commission has the ability to draw five (5) performing majority-minority districts, according to the report issued by Dr. Megan Gall.¹ The Commission can comply with the mandate of the federal Voting Rights Act by keeping longstanding communities of interest together.

The Nassau County Legislature must avoid splitting communities of interest. The Commission must not crack the town of Hempstead, (including Hempstead, Freeport, Elmont, Roosevelt, Lakeview, and North Valley Stream) Cedarhurst and Westbury. These areas represent longstanding communities of interest that are protected under the Voting Rights Act. Cracking them would hinder the ability of Latino and Black community members to meaningfully elect candidates of their choice in contravention of the legal protections set up to protect their vested interests in our democratic process.

C. State Law Protections

In addition to being subject to the federal Voting Rights Act, Nassau County is now also subject to the preclearance requirement of the John R. Lewis Voting Rights Act of New York. The preclearance requirement requires Nassau County to justify any map that it produces. Should any adopted maps have the effect of diluting the voting power of protected classes, they are subject to legal challenge and may be struck down. LatinoJustice and its many long-standing

¹ Attached as Exhibit A.



Long Island civil rights and legal advocacy partners will be closely monitoring any maps for compliance. We are ready to fight for the rights of our community members.

D. Power to the People, Not Politicians

While redistricting by its nature implicates political interests, it cannot be driven by it. People must drive the process, not politicians or partisan interest. As evidenced by the statewide redistricting process, maps that ignore the will of New York’s communities in the name of partisan interest will be struck down. State law protections² exist to prevent politicians from using the process to work for themselves. With partisan appointments historically acting as a proxy for influence into the map-drawing process, we remind the commissioners that they are required to avoid partisanship and uphold the mandates of objective redistricting criteria such as contiguity, competitiveness, compactness, and other methods of compliance with the Voting Rights Act. The September 21st, 2022 report by Dr. Daniel Magleby³ identifying the 2013 maps as an “extreme partisan gerrymander” raises serious red flags. The rights of our communities must not be subject to partisan will, and we will use every tool available to us to prevent harm to the voting rights of Latino community members.

III. Conclusion

Simply put, the Commission must meet its obligations under federal and state law. If it does not, the map risks suffering the same fate as recent statewide maps did earlier this year. I thank the Commission for the opportunity to testify and look forward to future opportunities to do so.

² See NY Home Rule § 34(4)(e) (which reads in relevant part: “Districts shall not be drawn to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties.”).

³ Attached as Exhibit B.

EXHIBIT A

To: The Nassau County Temporary Districting Advisory Commission

From: Megan Gall, PhD, GISP; Blockwell Consulting, LLC

Date: October 13, 2022

RE: Preliminary Analysis of County Legislative Districts in Nassau County, New York

Summary:

At the request of the Democratic Delegation of the Nassau County Temporary Districting Advisory Commission, I conducted a preliminary analysis to assess compliance of the current Nassau County legislative districts with the federal Voting Rights Act of 1965 (VRA) and the John R. Lewis Voting Rights Act of New York (NYVRA). Specifically, I was asked to: 1) evaluate the current legislative districts for compliance with federal and state law, 2) confirm compliant alternative districting configurations are possible, and 3) analyze the degree, if any, of racially polarized voting (RPV) in Nassau County.¹

Based on preliminary analyses, there is substantial evidence that the three Gingles preconditions² required to establish a violation under Section 2 of the VRA are met with respect to the current legislative boundaries established in 2013 ('2013 Legislative plan'). There is also substantial evidence that the requirements for a vote dilution claim under the NYVRA are currently met under the 2013 Legislative plan. Districting plans that are markedly similar to the 2013 Legislative plan will also likely violate federal and state law.

Redistricting:

There are numerous district configurations that satisfy the Gingles 1 Precondition and create five districts that are majority Black and Latino coalition districts³ and provide Black and Latino voters additional opportunity to elect candidates of choice. This is possible while also creating

¹ I collected voting age population data from the U.S. Census Bureau 2020 Decennial Census and estimated citizen voting age population using data from the U.S. Census Bureau American Community Survey. County officials used the dataset to create comprehensive files for analysis which included official election return data. I used these datasets for RPV and redistricting.

² The U.S. Supreme Court developed the 'Gingles Preconditions', commonly referred to as Gingles 1, 2 and 3 in *Thornburg v. Gingles* (478 U.S. 30 1986). A Section 2 violation requires all three preconditions are met. The preconditions hold that:

1. "(T)he minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district."
2. "(T)he minority group must be able to show that it is politically cohesive."
3. "(T)he minority must be able to demonstrate that the white majority votes sufficiently as a block to enable it... usually to defeat the minority's preferred candidate."

In other words, (1) the minority group must be geographically compact enough to comprise a majority in a district, (2) they must typically vote together for a shared candidate of choice, and (3) the white voters must also vote as a bloc in a way that "usually" prevails over the minority candidate of choice.

³ The five districts all have a combined Black and Latino VAP and CVAP that are both above 50%.

districts that are more compact and have fewer splits of towns and villages than the 2013 Legislative plan.

The 2013 Legislative Plan

I evaluated the 2013 Legislative plan using U.S. Census Bureau 2020 Decennial data. With population shifts, six districts no longer comply with the equal population requirements under the New York Municipal Home Rule Law (MHRL).⁴ Additionally, when the 2013 Legislative plan was adopted, it had three districts in which the combined Black and Latino VAP (voting age population) and CVAP (citizen voting age population) were both above 50% (Districts 1, 2, and 3).⁵ District 5 had a coalition VAP at or just over 50%⁶ but a CVAP of only 40.5%. Due to growth in the minority population, today there are four districts in which the Black and Latino VAP and CVAP are both above 50% (Districts 1, 2, 3, and 5).

I analyzed splits of political subdivisions under the 2013 Legislative plan. There are eight split villages in violation of the MHRL.⁷ The 2013 Legislative plan also has 6 districts split by town boundaries. Two of the six split districts are split across all three towns in Nassau County.

I analyzed the 2013 Legislative plan for compactness. The table below shows the mean, minimum, and maximum compactness scores for the 2013 Legislative districts using two of the most common compactness measures. Both measures range between 0 and 1 with 0 being the least compact and 1 being the most compact. Every alternative configuration I've developed improves compactness substantially.

2013 Leg. Plan	Reock	Polsby-Popper
	<i>(higher = more compact)</i>	
District Mean	0.32	0.22
District Minimum	0.14	0.08
District Maximum	0.44	0.44

Alternative Configurations with Five Black and Latino Coalition Districts

At the direction of the Democratic Delegation of the Nassau County Temporary Districting Advisory Commission, I have begun developing alternative district configurations that comply with all requirements under federal and state law. Although I have not finalized a map, at this

⁴ Specifically, the New York Municipal Home Rule Law states: "if such plan of districting or redistricting includes only single-member districts, such districts shall be as nearly equal in population as is practicable; the difference in population between the most and the least populous district shall not exceed five percent of the mean population of all districts."

⁵ According to population tables filed with the County Legislature in connection with the adopted 2013 Legislative plan, provided by the Democratic Delegation of the Nassau County Temporary Districting Advisory Commission.

⁶ Results vary slightly based on which VAP data (e.g. VAP, non-Hispanic VAP, and DOJ adjusted).

⁷ Specifically, the New York Municipal Home Rule Law states: "To the extent practicable, no villages, cities or towns except those having more than forty percent of a full ratio for each district shall be divided;..."

stage I can confirm that there are numerous configurations that contain five districts in which the combined Black and Latino VAP and CVAP are both above 50%. According to preliminary performance analyses, these five districts also provide Black and Latino voters additional opportunity to elect candidates of choice. Finally, the alternative configurations all create a district which provides Asian voters with the opportunity to influence election outcomes.

The alternative configurations improve on other critical measures when compared to the 2013 Legislative plan. The alternative configurations are possible while significantly improving individual district and overall compactness, preserving villages with a population less than 40% of a full district, and reducing splits of towns and unincorporated villages, while maintaining contiguity and population deviations required by the MHRL.

The alternative configurations all take substantial steps to preserve communities of interest not preserved in the 2013 Legislative plan. For example, the 2013 Legislative plan splits the Five Towns villages across four districts, whereas the alternative configurations keep the Five Towns in a single district. The current plan splits other significant Nassau County communities across three districts, including Hempstead (Village), Freeport, Rockville Centre, Hicksville, and East Meadow. The alternative configurations unify each of these communities in a single district or two. The alternative configurations also keep the barrier islands (Atlantic Beach, Long Beach, Lido Beach, and Point Lookout) in a single district.

Racially Polarized Voting:

I conducted a preliminary analysis of racially polarized voting (RPV)⁸ patterns in Nassau County by reviewing the 2017 and 2021 county clerk contests. I selected these contests because they are recent, endogenous elections with minority candidates on the ballot, which courts consider the most probative elections for analysis.

Based on this preliminary analysis of county clerk elections, RPV is present in Nassau County. Black and Latino voters voted in coalition, there is evidence of cohesion among white voters, and the white voting block was sufficient to defeat the minority-preferred candidate in both contests. Based on this preliminary analysis, candidates preferred by Black and Latino voters will usually be defeated by candidates preferred by white voters.

Based on this preliminary analysis, there is substantial evidence that Gingles 2 and 3 are met under the 2013 Legislative boundaries.

I will continue to expand these preliminary analyses and reserve the right to amend or supplement findings as additional data, resources, or materials become available and relevant.

⁸ There are several statistical methods available to test for the presence of RPV. The predominant technique is called Ecological Inference (EI) by Gary King. The Court recommended EI directly, it remains the staple method, and it is the method used here for the preliminary analyses.

About Blockwell Consulting, LLC and Dr. Megan Gall:

I am a quantitative social scientist and hold a PhD in political science, a Master's degree in Geographic Information Science, and GIS professional certification (GISP). I specialize in VRA compliance with full consideration of the Gingles Preconditions including RPV analyses, illustrative and remedial maps, and demographic analyses. I have served the U.S. Department of Justice, state and city governments, and non-profit legal groups conducting state, city, county, and special jurisdiction analyses. I also served as the sole RPV expert for the California Citizen's Redistricting Commission for 2020, have trained dozens of lawyers in the quantitative aspects of the VRA, and have created hundreds of redistricting plans for clients across the nation. I am a published author, national expert, and established speaker on these topics.

EXHIBIT B

MEMORANDUM

To: Nassau County Temporary Districting Advisory Commission

From: Daniel Magleby, PhD, Associate Professor of Political Science and Economics, Binghamton University

Subject: An evaluation of Nassau County's 2013 legislative district map for compliance with the Municipal Home Rule law prohibition against drawing districts favoring political parties.

Date: September 21, 2022

Nassau County's current legislative map, adopted in 2013, is an extreme partisan gerrymander. Compared to an ensemble of hypothetical, computer-drawn maps, the current set of districts is a statistical outlier. An analysis of six countywide races shows that the 2013 map exhibits more bias against Democratic voters than any of 10,000 maps generated by a neutral process. Accordingly, the 2013 map or any new map that is substantially similar would violate the prohibition in New York law against favoring one political party.¹

To evaluate the 2013 map, I conduct an "ensemble analysis." Since there are a large number of maps that could emerge from a neutral process, it is necessary to sample the set of all possible maps. I use a computer program to develop such a sample.² Numerous courts have accepted this methodology, including the New York Court of Appeals in *Harkenrider v. Hochul*. The result of the process is an ensemble of maps that incorporate the following criteria.

- Population parity – All districts in the hypothetical maps deviate by no more than the maximum population deviation in the 2013 map.³
- Contiguity – It is possible to move from any part of the simulated districts to any other party of the district without leaving the district.
- Relatively compact – The districts in the maps included in the ensemble are at least as compact as the districts in the 2013 map in two ways.
 - The least compact district in each map included in the ensemble is more compact than the least compact district in the 2013 map using the Polsby-Popper measure.
 - The districts in each map included in the ensemble are more compact on average than the districts in the 2013 map using the Polsby-Popper measure.
- Preservation of political subdivisions – Every hypothetical map maintains as whole all cities and villages that contain a population less than 40% of the ideal district population.
- Minority representation – Every hypothetical map has at least as many districts with a majority-minority population as the 2013 map.
- Town boundary traversal – None of the town boundaries are traversed by districts more often in the ensemble of maps than in the 2013 map.

The maps generated by the computer are examples of outcomes we would expect if mapmakers were not motivated by partisan goals. The program randomly recombines geography, subject to the criteria outlined above and only the criteria outlined above. Only after maps are drawn, do I consider the partisanship of voters residing in the hypothetical, computer-drawn districts. For this analysis, I use election returns from six county-wide contests held during the last three election cycles.⁴ To determine the level of partisan bias in the current County Legislature map, I compare patterns of partisan bias in the hypothetical maps to the partisan bias in the 2013 map of legislative districts. Here, I calculate the median-mean difference in district-level support for Democratic candidates.⁵ A negative median-

¹Municipal Home Rule Law § 34.

²To develop the ensemble of hypothetical, neutral, alternative maps. I use a computer program I developed as part of my research that has been subject to peer review and that has been the basis of expert testimony in redistricting litigation in North Carolina in January of 2022.

³I use unadjusted population to develop the ensemble of maps, and I calculate district populations in the 2013 map using unadjusted population from the 2010 census.

⁴County Executive and Comptroller in 2017, District Attorney in 2019, and County Executive, District Attorney and Comptroller in 2021.

⁵The median-mean difference assesses differences in vote weights between the two major parties. Here, it roughly corresponds to the percentage of the vote above 50% that a party would need to receive in order to win 50% of the seats in the county legislature.

mean value represents a bias against Democrats, a positive value represents bias against Republicans. I report my findings in Figure 1.

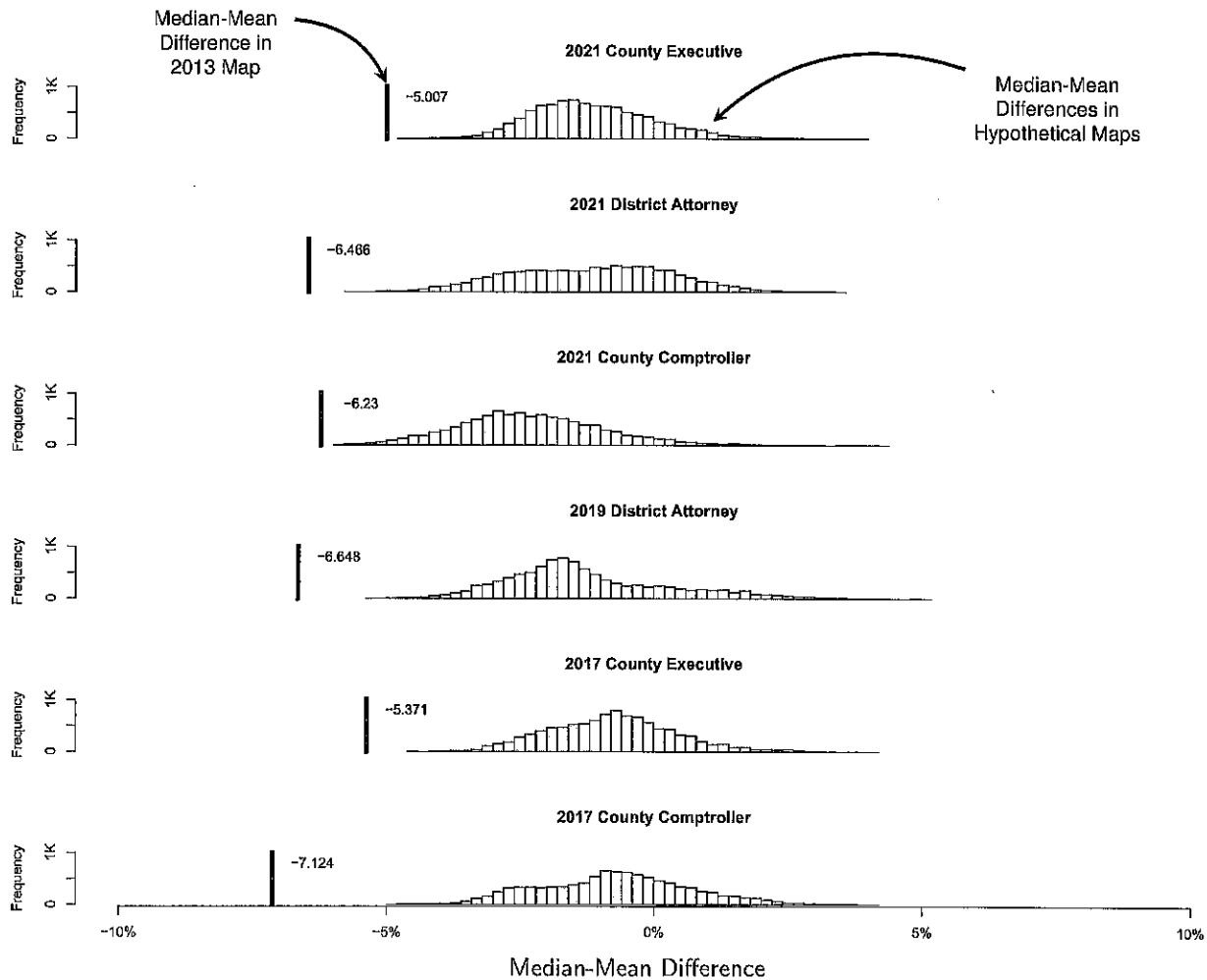


Figure 1: Distribution of median-mean differences in district-level Democratic vote in 10,000 hypothetical, computer drawn maps of Nassau County's legislative districts. The vertical line in each panel corresponds to the median-mean difference of district-level Democratic vote in the 2013 County Legislature map.

Figure 1 reveals the degree to which the 2013 map is biased against Democrats and shows that the bias exceeds what we would expect if the map were drawn neutrally. Consider the top panel in which I use the 2021 contest for County Executive to gauge patterns of partisan support. The 10,000 simulated maps show median-mean differences that range between roughly -4% to roughly 4.5% . By contrast, the 2013 map of legislative districts has a median-mean difference of -5.007% . The 2013 map exhibits more bias against Democratic voters than any map in the ensemble of simulated maps. More precisely, the chance of arriving at a map as biased as the 2013 map through a neutral, party-blind process is less than $1/10,000$. That pattern repeats when I use votes cast in any of the six countywide election I analyze here. The patterns present in Figure 1 are clear evidence that the 2013 map is an extreme partisan gerrymander and a violation of New York's Municipal Home Rule law.

I am an Associate Professor of Political Science and Economics at Binghamton University, SUNY. I received a PhD and MA in political science from the University of Michigan, an MS in mathematical methods in the social sciences from Northwestern University, and a BA in political science from Brigham Young University. In addition to teaching courses on legislative politics and quantitative methodology, I also conduct research on legislative elections, geographic information systems (GIS), redistricting, voting rights, legislatures, and political geography. My research has been published in leading scholarly outlets in political science and economics.